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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

In re A.C., a Person Coming Under the
Juvenile Court Law.

C059041

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

(Super. Ct. No.
J04769)

Plaintiff and Respondent,

v.

VINCENT B.,

Defendant and Appellant.

Appellant Vincent B., father of the minor A.C., appeals from orders entered at the dispositional hearing adjudging the minor a dependent and placing him out of the home. (Welf. & Inst. Code, §§ 352, 360, 395.)¹ Appellant contends the court failed to make the necessary findings to deny him custody as a noncustodial parent. We affirm the orders of the juvenile court.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

BACKGROUND

On December 7, 2007, a section 300 petition was filed on behalf of the newborn minor. The petition alleged the minor and his mother had tested positive for methamphetamine at the time of the minor's birth. The minor's mother admitted using drugs during her pregnancy, had a substantial drug use history, had failed to reunify with her older children, was homeless, and was unable and unwilling to care for the minor. She wished the minor to be adopted.² The petition alleged that appellant was the alleged father and that his current circumstances and ability to provide support for the minor were unknown. The petition also alleged that appellant "has a criminal record and a history of behavior including, battery, possession of a controlled substance and is currently on probation for numerous charges including, damage to a jail or prison, possession of a switchblade or knife, battery, and possession of a controlled substance. This pattern of behavior and related associations places the minor at increased risk of abuse and neglect."

After paternity testing, it was established that appellant was the biological father and the juvenile court thereafter declared him to be the presumed father. Appellant waived his right to a jurisdictional hearing and pled no contest to the allegations in the section 300 petition. Thereafter, the

² The mother is not a party to this appeal. Further recitation of the allegations and facts relating to the mother are not relevant to the resolution of appellant's issue on appeal.

juvenile court found the allegations in the petition true and assumed jurisdiction over the minor.

The disposition report for the April 8, 2008, hearing elaborated on appellant's criminal history. He had March 2007 and July 2007 convictions for battery (Pen. Code, § 242), an April 2007 conviction for possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)), and a May 2007 conviction for possession of a switchblade knife (Pen. Code, § 653k).³ At the hearing, the social worker testified appellant also had a November 2005 arrest for drugs or drugs with alcohol, and an arrest for damage to a prison or jail. One of appellant's battery convictions involved the mother of the minor in this case.

The social worker also testified that appellant had failed in his Proposition 36 probation, ordered in connection with his drug offense conviction, by failing to appear in drug court in October 2007. As a result, a warrant was issued for his arrest. By the time of the disposition hearing, appellant had "cleared" the warrant, having been assigned to the sheriff's alternative work program and rereferred to drug court. He had been attending drug court once a week since April 30, 2008.

Appellant admitted to having last used methamphetamine around January 2008, and having last used marijuana in February and/or March 2008. Other than drug court, the only other

³ Appellant testified there was only one battery conviction.

evidence of substance abuse treatment was appellant's testimony that he had "just started" attending Alcoholics Anonymous or Narcotics Anonymous a week before the hearing. Prior to appellant's starting in drug court again, the social worker had twice referred appellant to central intake for assessment.

Appellant had also been ordered to attend a 52-week domestic violence program in connection with his battery conviction. Appellant testified he had attended approximately seven to 10 of the classes at the time of the hearing.

The juvenile court stated "what's concerning to me is really the level of [appellant] is in terms of his completion of drug program. He's in Drug Court II obviously because he didn't do what he was supposed to do under . . . Proposition 36. That's the reason he received a violation of probation, which is on page 13 of the disposition report." The juvenile court also felt appellant needed to address the previous battery issue, but the court's main concern was appellant's history of drug abuse, and his admitted recent use of drugs even while in his current drug program. The court explained he believed appellant was on the "right track" but that it was easy to have a "pitfall" with drugs, and appellant needed more time before the court could find there was no substantial risk of danger to the minor.

DISCUSSION

Appellant contends the juvenile court erred in failing to make the findings required by section 361.2 relating to placement of the minor with a noncustodial parent.

Section 361.2, subdivision (a) provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

The juvenile court must make the detriment finding by clear and convincing evidence. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 699-700.) "[A] nonoffending parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent's choices will be 'detrimental to the safety, protection, or physical or emotional well-being of the child.' [Citations.]." (*Id.* at p. 697.)

"We review the record in the light most favorable to the court's order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the children would suffer such detriment. [Citations.] Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. [Citation.]" (*In re John M.*

(2006) 141 Cal.App.4th 1564, 1569-1570, quoting *In re Luke M.*
(2003) 107 Cal.App.4th 1412, 1426.)

Initially, we note that appellant refers to himself as the "non-custodial, non-offending" parent. He further affirmatively misrepresents the record by stating: "Firstly, the jurisdictional findings did not implicate [appellant], except to allege that [appellant's] ability to care for [the minor] was unknown and that [appellant] was currently on probation." In fact, as set forth herein, on the precise page in the record that appellant cites for the above proposition, the petition also alleges that appellant "has a criminal record and a history of behavior including, battery, possession of a controlled substance and is currently on probation for numerous charges including, damage to a jail or prison, possession of a switchblade or knife, battery, and possession of a controlled substance. This pattern of behavior and related associations places the minor at increased risk of abuse and neglect." Appellant pled no contest to this allegation and the juvenile court found it true. Thus, we question appellant's characterization of himself as a "non-offending parent."⁴ In any

⁴ We also sternly remind counsel that an attorney has an unqualified duty to refrain from acts that mislead the court. (Bus. & Prof. Code, § 6068, subd. (d); Rules of Prof. Conduct, rule 5-200(B) [a member of the State Bar "[s]hall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law"]; *Jackson v. State Bar* (1979) 23 Cal.3d 509, 513.) "'Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense.'" [Citations.] 'Counsel should

event, appellant *is* the *noncustodial* parent, making the provisions of section 361.2 applicable. Nonetheless, the evidence supports the juvenile court's finding that placement with appellant would be detrimental to the minor.

Appellant has a history of drug abuse and domestic violence. The court had found that this pattern of behavior and related associations placed the minor at increased risk of abuse and neglect. Although appellant was on the right track, he was still in the early stages of his substance abuse treatment. He had failed Proposition 36 drug probation in October 2007 (halfway through the program) by failing to attend drug court and had restarted drug court only one month before the hearing. He admitted using methamphetamine around January 2008 and had used marijuana in March 2008, thus having been drug-free for less than two months. He had started Narcotics Anonymous/Alcoholics Anonymous only one week before the hearing. Appellant had not made much more actual progress in his domestic violence treatment. Again, although he was on the right track, he had attended only seven to 10 classes (of a 52-week program).

Under these circumstances, the juvenile court's finding that placement with appellant at this early juncture would be

not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.' [Citation.]" (*Williams v. Superior Court* (1996) 46 Cal.App.4th 320, 330.)

detrimental to the safety, protection, or physical or emotional well-being of the child is supported by substantial evidence.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.